

Chapter 17.58

HAZARDOUS MATERIALS

(2814-2/86, 3732-5/06)

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17.58.010 Definitions. For the purpose of this chapter, the words and terms listed in this section shall have the following definitions unless from the context a different meaning is clearly indicated:

- (a) "Carcinogen" refers to a substance which causes cancer. For purposes of this chapter, carcinogens are those substances specified on the list developed by the United States Department of Health and Human Services in its second annual Report on Carcinogens.
- (b) "CAS number" means the unique identification name as assigned by the Chemical Abstracts Services to specific chemical substances.
- (c) "Chemical name" means the scientific designation of a substance in accordance with the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Services.
- (d) "Common name" means a designation of identification such as a code name, code number, trade name or brand name used to identify a substance other than by its chemical name.
- (e) "Hazardous Materials Disclosure Package (Disclosure Package)" means the written information, including forms and diagrams, submitted to the Fire Department pursuant to HBMC section 17.58.050/UFC Appendix II-E, the California Health and Safety Code section 25504, and the California Code of Regulations Title 27, section 15100. (3732-5/06)
- (f) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of hazardous material in any fashion.
- (g) "Hazardous material" means any substance or product:
 - (1) For which the manufacturer or producer is required to prepare an MSDS for the substance or product pursuant to the Hazardous Substances Information and Training Act (Chapter 2.5, Part 1 of Division 5 of the California Labor Code commencing with section 6360) or pursuant to any applicable federal law or regulation; or
 - (2) Listed in California Health and Safety Code section 25316; or

- (3) Which is listed as a radioactive material set forth in the Code of Federal Regulations Chapter 1, Title 10, sections 10, 30, or 70 that is maintained and updated by the Nuclear Regulatory Commission; or (3732-5/06)
- (4) Which is listed as a legal carcinogen in Title 8, Subchapter 7, Group 16 of the California Code of Regulations; or (3732-5/06)
- (5) Which the Director of the Department of Food and Agriculture classifies as pesticides; or
- (6) Which the EPA classifies as priority organic pollutants.
- (7) As defined and classified in HBMC section 17.56/CFC section 8001.1.2 and section 8002.3. (3732-5/06)
- (8) Which is listed as an extremely hazardous material in the Code of Federal Regulations, Title 40, Chapter I, section 355, Appendices A and B. (3732-5/06)
- (h) "Hazardous waste" or "extremely hazardous waste" means any material that is identified in:
 - (1) California Health and Safety Code sections 25115 and 25117, and Title 22 of the California Code of Regulations, section 66261.10 through 66261.126; or (3732-5/06)
 - (2) The Code of Federal Regulations, Title 40, sections 261.20--261.33. (3732-5/06)
- (i) "Health Official" means the Health Officer of the county of Orange or his deputy.
- (j) "MSDS" means a Material Safety Data Sheet prepared pursuant to California Labor Code section 6390 or pursuant to the regulations of the Occupational Safety and Health Administration of the United States Department of Labor.
- (k) "Physician" means any person who holds a valid certificate from the State of California to practice the healing arts.
- (l) "SIC code" means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses. (3732-5/06)
- (m) "Storage" or "storing" means the containment of substances or materials in a manner which does not constitute disposal of such substances or materials. (3732-5/06)
- (n) "Use" includes the handling, processing or storage of a hazardous material. (3732-5/06)
- (o) "User" means any individual, person, trust, firm, joint stock company, corporation, partnership, association, city, county, district and the state, or any department or agency thereof engaged in any activity involving the use or handling of a hazardous substance or waste. (2814-2/86, 3732-5/06)

17.58.020 Standards--Administering agency. There is hereby adopted by reference Chapter 6.95 of Division 20 of the California Health and Safety Code, commencing with section 25500, establishing minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. The Fire Department of the city of Huntington Beach shall be the administering agency for the provisions of this chapter, and all other applicable statutes promulgated by the federal government or the state of California. When deemed necessary by the Fire Chief, the city may adopt and enforce more restrictive regulations for the protection of its inhabitants. (2814-2/86)

17.58.030 Designation of a hazardous material. Any material may be added to the list of hazardous materials, defined in section 17.58.010(g) upon a finding by the Fire Chief that the material, because of its quantity, concentration, physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released. A material added to the list of hazardous materials, pursuant to this section, shall be designated as either a hazardous material or waste. The Fire Chief may use Chapter 17.56 of this code to assist him in determining the types and amounts of hazardous materials to be disclosed. (2814-2/86, 3732-5/06)

17.58.040 All users--General information required. Upon request, all users shall provide the following information:

- (a) Any information deemed necessary by the Fire Department for protection of the public health, safety or environment; and
- (b) Any information requested by a physician in order to treat a patient. (2814-2/86)

17.58.050 Users of hazardous materials--Disclosure required.

- (a) Any person who becomes a user or handler of any hazardous material equal to or exceeding 55 gallons of a liquid, 500 pounds of a solid, 200 cubic feet of a gas (at standard temperature and pressure, including the compressed or liquefied equivalent), that is listed as an extremely hazardous material, or is listed as a radioactive material, shall submit a completed Hazardous Materials Disclosure Package to the Fire Department within thirty days of becoming a user or handler. (3732-5/06)
- (b) The information required to be disclosed by the Fire Department shall include, but not be limited to, the following: (3732-5/06)
 - (1) A separate page of information (inventory form) for each hazardous material that includes, but is not limited to, the chemical name, or common name/trade name (if applicable) and/or the composition by concentration of the material's hazardous components; (3732-5/06)
 - (2) CAS number;
 - (3) SIC code;
 - (4) The physical state and type of container used for each hazardous material; (3732-5/06)
 - (5) The maximum amount each hazardous material handled, stored or used at any one time over the course of the year, and the average amount of each hazardous material handled or stored on site at any one time during a year; (3732-5/06)
 - (6) Specific information as to how and where hazardous materials are handled or used in order to allow fire and safety personnel to prepare adequate emergency response plans for the potential release of such hazardous materials. (3732-5/06)
 - (7) The names and telephone numbers of at least two (2) persons representing the business and able to assist emergency personnel in the event of an emergency involving the business during business and non-business hours; (3732-5/06)
 - (8) The hazard characteristics of all hazardous material disclosed including, but not limited to, the degree such material may be toxic, flammable, reactive, and corrosive. (3732-5/06)
 - (9) A Business Emergency Plan detailing the emergency response plans and procedures to be implemented in the event of a release or threatened release of a hazardous material, as listed in California Health and Safety Code section 25504. (2814-2/86, 3732-5/06)

17.58.060 Additional times disclosure required. Any user who has previously filed a Hazardous Materials Disclosure Package, pursuant to Section 17.58.050, shall submit to the Fire Department updated disclosure information within 30 days of becoming aware of any changes in their operations, including:

- (a) Significant change (increase or decrease) in the use or handling of a hazardous material; or
- (b) Addition to inventory of a previously undisclosed hazardous material at or exceeding the disclosure limits listed in 17.58.050(a); or
- (c) Change of business address; or
- (d) Change of business ownership; or
- (e) Change of business name; or
- (f) Closure of business.

Any user who has previously filed a disclosure form, pursuant to section 17.58.050, shall submit to the Fire Department a new disclosure form containing the information required by this section. (2814-2/86, 3732-5/06)

17.58.070 Exemptions from disclosure. The following materials, persons or entities shall be exempt from the disclosure requirements of this chapter: (3732-5/06)

- (a) No MSDS shall be required to be filed with a Hazardous Materials Disclosure Package for a material defined as hazardous in this chapter solely by its presence on the Nuclear Regulatory Commission's list of radioactive materials. (3732-5/06)
- (b) Hazardous materials or substances contained in food, drug, cosmetic or tobacco products.
- (c) Any person using or handling hazardous material in quantities less than listed in Section 17.58.050 shall not be required to disclose such use or handling unless the Fire Chief has given notice that the hazardous characteristics, weight or volume of a specific hazardous material have been lowered because of public health concerns, or to meet the intent and requirements of Chapters 17.56 and 17.58 of this code and California Health and Safety Code sections 25500 through 25520. (3732-5/06)
- (d) Hazardous materials contained solely in consumer products packaged for use by and distributed to the public unless the product is repackaged or altered in any way; provided, however, that the manufacture and distribution of such products is not exempt, or required to be permitted or reported by provisions of Chapter 17.56 of this code.
- (e) Any person, while engaged in the transportation of hazardous materials, including storage directly incidental thereto for a period equal to or less than 30 days during a calendar year, provided that such materials are accompanied by shipping papers prepared in accordance with the provisions of 49 Code of Federal Regulations, Subchapter c. (3732-5/06)
- (f) No MSDS shall be required for any hazardous material if such information is not available at the time disclosure is required, provided, however, that an MSDS shall be submitted to the Fire Department within fifteen (15) days after receipt by the user.
- (g) Infectious waste generated by hospitals, medical centers, clinics and other health care facilities as defined in California Health and Safety Code section 117690. (2814-2/86, 3732-5/06)

17.58.080 Disclosure of information to public. The Fire Department shall maintain files of all Hazardous Materials Disclosure Packages received, and these files shall be available for review to the public during normal business hours subject to the provision of section 17.58.140 relating

to trade secrets and California Health and Safety Code section 25506(a) relating to hazardous materials storage locations. (2814-2/86, 3732-5/06)

17.58.090 Persons requesting access to disclosure packages--Record required. A record of all persons who request access to the hazardous materials disclosure forms shall be kept. Such record shall include: (3732-5/06)

- (a) Name, address and telephone number of person requesting access, based on the showing of appropriate identification;
- (b) Name and address of the person, business or governmental agency such person represents;
- (c) Identification of the specific file(s) examined or requested to be copied;
- (d) Reason why person has requested such information. (2814-2/86, 3732 5/06)

17.58.100 Information regarding hazardous waste. Upon request, the Fire Department will make available to the Health Officer and any other emergency response personnel in connection with that person's official duties for the protection of public health and safety or the environment, information regarding hazardous materials, hazardous wastes, extremely hazardous wastes, aboveground storage tanks, and underground storage tanks, when such information has been obtained by the Fire Department. (2814-2/86, 3732-5/06)

17.58.110 Identification. When required by the Fire Chief, areas containing hazardous materials shall be identified. Such identification may include signs, color coding, posting lists of materials and material safety data sheets, or other notice deemed necessary. (2814-2/86, 3732-5/06)

17.58.120 Fees.

- (a) A fee to defray the administrative costs of the Hazardous Materials Disclosure Program, including, but not limited to, processing disclosure packages and facility inspections, shall be assessed on all business captured by the program. The fees shall be set by resolution of the City Council. (3732-5/06)
- (b) Any user who fails to file a Hazardous Materials Disclosure Package within the times specified in section 17.58.050 and 17.58.060 shall pay a late filing fee, established by resolution of the City Council. Such late filing fee shall be in addition to other regularly assessed fees. (2814-2/86, 3732-5/06)

17.58.130 Approved key box and location. When required by the Chief, any user submitting a Hazardous Materials Disclosure Package may be required to install an approved key cabinet for emergency utilization of MSDS, floor plans, site plans and access keys. The location of such key cabinet shall be approved by the Fire Chief. (2814-2/86, 3732-5/06)

17.58.140 Trade secrets. A user may designate some or all of the information on the disclosure form as a trade secret. As used herein, trade secret shall have the meaning given it by California Government Code section 6254.7 and California Evidence Code section 1060. Any information designated as a trade secret on the disclosure form, or otherwise obtained by the Fire Department or any of its employees, shall not be disclosed to anyone except:

- (a) To an officer or employee of the city, the county of Orange, the state of California, or the United States of America, in connection with the official duties of such officer or employee under any law for the protection of health.
- (b) To persons under contract with the city and their employees if, in the opinion of the Fire Chief, such disclosure is necessary and required for the satisfactory performance of a work contract.

- (c) To any physician when such information is deemed necessary to treat a patient.

For the purpose of this section, fire and emergency response personnel and County Health Personnel operating within the jurisdiction of the city shall be considered employees of the city.
(2814-2/86, 3732-5/06)

17.58.150 Trade secret information request--User notified. When the Fire Department receives a request for release of information to the public, and the Fire Department has been notified by the user that such information is a trade secret, the Fire Department shall give the user written notice by certified mail of such request. The Fire Department shall release the information, pursuant to the limitations referenced above in Section 17.58.080, thirty (30) days after the date of mailing said notice unless prior to the expiration of the thirty (30) days, the Fire Department is informed that the user has instituted an action in a court of competent jurisdiction for declaratory relief that said information is subject to protection or has obtained an injunction to prohibit disclosure of such information to the general public. (3732-5/06)

The provision of this section shall not permit a user to refuse to disclose information required to be disclosed under the provisions of this chapter. (2814-2/86, 3732-5/06)

17.58.160 Penalty.

- (a) Any officer or employee of the city, or former officer or employee, who by virtue of such employment or official position, has obtained possession of or has access to information, the disclosure of which is prohibited by this chapter, and who, knowing that disclosure of the information is prohibited, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, shall be guilty of a MISDEMEANOR, and shall be subject to the provisions contained in subsection (d) hereof.
- (b) For purposes of determining a violation, a contractor and any employee of such contractor who has been furnished information pursuant to the provisions of this chapter shall be deemed an employee of the city, and who knowingly and willfully discloses such information, shall be guilty of a MISDEMEANOR, and shall be subject to the provisions contained in subsection (d) hereof.
- (c) Any physician who has been furnished information or who has obtained information pursuant to section 17.58.150(c) and who, knowing that the disclosure of the information is prohibited, knowingly and willfully discloses the information, shall be guilty of a MISDEMEANOR, and shall be subject to the provisions contained in subsection (d) hereof.
- (d) Any person who violates or willfully fails to comply with any provision of this chapter is guilty of a MISDEMEANOR, and upon conviction thereof shall be punished by a fine not to exceed \$500 or by imprisonment in the County Jail for a period of six months, or both such fine and imprisonment, and each such person shall be guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted. (2814-2/86)